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AMENDATORY SECTION (Amending WSR 08-16-045, filed 7/29/08, effective 8/29/08)

WAC 458-20-126 Sales of motor vehicle fuel, special fuels, and nonpollutant fuel. (1) **Introduction.** This section explains the retail sales and use taxes for motor vehicle fuel, special fuels, and fuels commonly referred to as natural gas and propane. This section also provides documentation requirements to buyers and sellers of fuel for both on and off highway use.

(2) **What are motor vehicle fuel and special fuels, and how are they taxed?** "Motor vehicle fuel" as used in this section means gasoline or any other inflammable gas or liquid the chief use of which is as fuel for the propulsion of motor vehicles. (See RCW 82.36.010.) "Special fuels" as used in this section mean all combustible gases and liquids suitable for the generation of power for propulsion of motor vehicles, except that it does not include motor vehicle fuel as defined above. (See RCW 82.38.020.) Diesel fuel is an example of a special fuel.

The retail sales tax or use tax applies to sales and uses of motor vehicle fuel or special fuel, unless an exemption applies, when the taxes of chapter 82.36 or 82.38 RCW have not been paid or have been refunded. Generally the fuel taxes apply to sales of fuel for highway consumption and the sales or use tax applies to fuel sold for consumption off the highways (e.g., boat fuel, or fuel for farm machinery or construction equipment, etc.).

(3) **What motor vehicle fuel and special fuels exemptions are available?**

(a) (~~(County owned ferries.)~~) **Passenger-only ferries.** RCW 82.08.0255 and 82.12.0256 provide exemptions from the retail sales tax and use tax for motor vehicle fuel or special fuel(~~(s)~~), purchased on or after April 27, 2007, for use in passenger-only ferry vessels. This exemption applies only to public transportation benefit areas created under chapter 36.57A RCW, county owned ferries, or county ferry districts created under chapter 36.54 RCW (~~(for use in passenger-only ferries)~~).

(b) **Nonprofit transportation providers.** RCW 82.08.0255 and 82.12.0256 provide retail sales tax and use tax exemptions for sales of or uses of motor vehicle fuel or special fuels purchased by private, nonprofit transportation providers

certified under chapter 81.66 RCW, who are entitled to fuel tax refund or exemption under chapter 82.36 or 82.38 RCW.

(c) **Public transportation.** RCW 82.08.0255 and ~~((82.12.0265))~~ 82.12.0256 provide exemptions for the retail sales tax and use tax when motor vehicle fuel or special fuels are purchased or used for the purpose of public transportation, and the purchaser is entitled to a refund or an exemption under RCW 82.36.275 or 82.38.080(3).

~~(d) ((**Public transportation benefit areas (PTBA).** For purchases on or after April 27, 2007, RCW 82.08.0255 and 82.12.0256 provide retail sales tax and use tax exemptions for motor vehicle fuel and special fuels purchased by a PTBA created under chapter 36.57A RCW.~~

~~(e))~~ **Special fuels used in interstate commerce.** The retail sales tax does not apply to sales of special fuels delivered in this state which are later transported and used outside this state by persons engaged in interstate commerce. (RCW 82.08.0255(2).) This exemption also applies to persons hauling their own goods in interstate commerce.

Exemption certificate. Persons selling special fuels to interstate carriers must obtain a completed exemption certificate "Certificate of Special Fuel Sales to Interstate Carriers" from the purchaser in order to document the entitlement to the exemption. The exemption certificate can be obtained from the department of revenue (department) on the internet at <http://www.dor.wa.gov/>, or by contacting the department's taxpayer services division at:

Taxpayer Services
Department of Revenue
P.O. Box 47478
Olympia, WA 98504-7478
1-800-647-7706

The provisions of the exemption certificate may be limited to a single sales transaction, or may apply to all sales transactions as long as the seller has a recurring business relationship with the buyer. A "recurring business relationship" means at least one sale transaction within a period of twelve consecutive months.

~~((f))~~ (e) **Farm fuel users of diesel or aircraft fuels.** For the purpose of this section, a "farm fuel user" means either a farmer or a person who provides horticultural services for farmers, such as soil preparation, crop cultivation, or crop harvesting services.

(i) Effective March 6, 2006, RCW 82.08.865 and 82.12.865 exempt farm fuel users from retail sales and use taxes for diesel and aircraft fuel purchased for nonhighway use.

(ii) Substitute Senate Bill (SSB) 5009, chapter 443, Laws

of 2007, added biodiesel fuel as exempt from retail sales and use taxes when purchased or used by farm fuel users for nonhighway use. This exemption, effective May 11, 2007, also applies to a fuel blend if all the component fuels of the blend would otherwise be exempt under RCW 82.08.865 and 82.12.865 if the component fuels were sold as separate products. The exemptions do not apply to fuel used for residential heating purposes.

(iii) When purchasing an eligible fuel, a farm fuel user must provide the seller with a completed "Farmers' Retail Sales Tax Exemption Certificate," which can be obtained from the department on the internet at <http://www.dor.wa.gov/>, or by contacting the department's taxpayer services division at:

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Sellers of eligible fuels to farm fuel users must document the tax exempt sales of red-dyed diesel, biodiesel, or aircraft fuel by accepting the certificate mentioned above and retaining it in their records for five years.

(4) **Nonpollutant fuels.** Nonpollutant fuels are described as natural gas and liquefied petroleum gas, commonly called propane. Nonpollutant fuels can be purchased for either highway or "off-highway" use. Sales of nonpollutant fuels for highway use are normally subject to taxes under either chapter 82.36 or 82.38 RCW. Nonpollutant fuels purchased for "off-highway" use are subject to retail sales tax or use tax

(a) **Highway fuel used by Washington licensed vehicle owners.** RCW 82.38.075 provides for payment of an annual fee by users of nonpollutant fuel in lieu of the motor vehicle fuel tax. This fee is paid at the time of original and annual renewals of vehicle license registrations. A decal or other identifying device must be displayed as prescribed by the department of licensing as authority to purchase these nonpollutant fuels.

Fuel dealers should not collect sales or use tax on any nonpollutant fuel sold to Washington licensed vehicle owners for highway use when the vehicle displays a valid decal or other identifying device issued by the department of licensing.

(b) **"Off-highway" fuel use.** Nonpollutant fuels purchased for "off-highway" use are not subject to the taxes of chapter 82.36 or 82.38 RCW, and therefore the retail sales tax applies.

(c) **Bulk purchases of fuel.** The department recognizes that certain licensed special fuel users may find it more practical to accept deliveries of nonpollutant fuels into a bulk storage

facility rather than into the fuel tanks of motor vehicles. Persons selling nonpollutant fuels to such bulk purchasers must obtain from the purchaser an exemption certificate in order to document entitlement to the exemption. The "Certificate for Purchase of Nonpollutant Special Fuels" must certify the amount of fuel which will be consumed by the purchaser in using motor vehicles upon the highways of this state. This procedure is limited, however, to persons duly registered with the department. The registration number given on the certificate ordinarily will be sufficient evidence that the purchaser is properly registered. The "Certificate for Purchase of Nonpollutant Special Fuels" can be obtained from the department on the internet at <http://www.dor.wa.gov/>, or by contacting the department's taxpayer services division at:

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(i) When fuel is purchased for both on and off highway use, and it is not possible for a special fuel user licensee to determine the exact proportion purchased for highway use in this state, the amount of the off-highway use special fuel may be estimated. In the event such an estimate is used and retail sales tax is not paid, the purchaser must make an adjustment on the next excise tax return and remit use tax on the portion of the fuel used for off-highway purposes.

(ii) Nonpollutant fuel not placed in vehicle fuel tanks by the seller are subject to retail sales tax, unless a "Certificate for Purchase of Nonpollutant Special Fuels" is obtained from the purchaser. The seller must collect and remit the retail sales tax to the department, or retain the certificate as part of his permanent records. When nonpollutant fuel is delivered by the seller into the bulk storage facilities of a special fuel user licensee or is otherwise sold to such buyers under conditions where it is not delivered into the fuel tanks of motor vehicles, it will be presumed that the entire amount of fuel sold is subject to retail sales tax unless the seller has obtained a completed certificate.

(d) **Vehicles licensed outside the state of Washington.** Owners of out-of-state licensed vehicles are exempt from the requirement to purchase an annual license as provided in RCW 82.38.075. In lieu of taxes of chapters 82.36 and 82.38 RCW, retail sales tax is due on their purchases of nonpollutant fuel, for either highway or off-highway use.

(5) **Refunds are available for fuel taxes paid when fuel is consumed off the highway.** If a person purchases motor vehicle

fuel or special fuels and pays the fuel taxes of chapter 82.36 or 82.38 RCW, and then consumes the fuel off the highway, the person is entitled to a refund of these taxes under the procedures of chapter 82.36 or 82.38 RCW. However, a person receiving a refund of vehicle fuel taxes because of the off-highway consumption of the fuel in this state is subject to use tax on the value of the fuel. The department of licensing administers the fuel tax refund provisions and will deduct from the amount of a refund the amount of use tax due.